

EXHIBIT 5

Page 1

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
) No.
vs.) 5:19-CV-4063
)
SCHUSTER CO,)
)
Defendant.)

The remote videoconference and
teleconference Rule 30(b)(6) deposition of
CLIFFORD R. HAYMAN, Ph.D., for DCI Consulting,
called for examination pursuant to the Rules of
Civil Procedure for the United States District
Courts pertaining to the taking of depositions,
taken before Layli Phillips, Certified Shorthand
Reporter of the State of Illinois, all
participants from their individual locations, on
October 6, 2020, at 9:03 a.m.

Reported by: Layli Phillips, CSR, RPR, CRR
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Case 5:19-cv-04063-LRR-MAR Document 56-7 Filed 01/26/21 Page 1 of 12

EEOC APP 112

1 APPEARANCES (via videoconference):

2 For the Plaintiff:

3 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
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22 For the Deponent and DCI Consulting:

23 FORTNEY & SCOTT, LLC.
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31 ALSO PRESENT:

32 Mr. Jeff Arens, Schuster
33 (Via audio conference);

34 Mr. John Clifford, CRT
35 (Via audio conference.)

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Case 5:19-cv-04063-LRR-MAR Document 56-7 Filed 01/26/21 Page 2 of 12

I N D E X

3 Examinations Page
4
5 By Mr. Shultz 6

E X H I B I T S

Number	Description	Page
Exhibit 1	Subpoena With the Notice Topics	11
Exhibit 2	Validation Study That DCI Conducted For CRT	16
Exhibit 3	DCI391 and 392	23
Exhibit 4	CRT Schuster Validation Loss Data March 2010_February 2017 020817	25
Exhibit 5	DCI86	27
Exhibit 6	Coding For CRT to Review	28
Exhibit 7	DCI471 to 472	36
Exhibit 8	DCI243 to 244	49
Exhibit 9	CRT426 to 427	54
Exhibit 10	CRT143 to 156	62

		Page 4	
1	Exhibit 11	CRT406 to 410	65
2	Exhibit 12	DCI649 to 650	67
3	Exhibit 13	KAST1718	70
4	Exhibit 14	DCI200 to 213	71
5	Exhibit 15	DCI302	73
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
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Case 5:19-cv-04063-LRR-MAR Document 56-7 Filed 01/26/21 Page 4 of 12

EEOC APP 115

1 THE REPORTER: All parties are aware
2 that the witness will be sworn in remotely. The
3 parties agree not to challenge the validity of any
4 oath administered by the court reporter, even if
5 the court reporter is not physically present with
6 the witness and not a notary public in the state
7 where the witness resides.

8 Here begins the webconference deposition
9 of Dr. Clifford Haimann in the matter of EEOC vs.
10 Schuster Company.

11 Today's date is October 6, 2020, and the
12 time is 9:03 a.m. My name is Layli Phillips of
13 Thompson Court Reporters.

14 Beginning with the noticing party, will
15 counsel please introduce themselves, state whom
16 they represent, and stipulate to the swearing in
17 of the witness remotely.

18 MR. SHULTZ: Miles Shultz for the EEOC.
19 Also Elizabeth Banaszak appearing for the EEOC,
20 and the EEOC stipulates to the remote swearing in.

21 MR. PHILLIPS: Doug Phillips for
22 defendant. Defendant stipulates.

23 MR. FISHMAN: Burton Fishman for
24 deponent DCI. Defendant stipulates or third-party

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Case 5:19-cv-04063-LRR-MAR Document 56-7 Filed 01/26/21 Page 5 of 12

1 stipulates.

2 (Witness sworn.)

3 THE REPORTER: The witness has declared
4 their testimony during this proceeding is under
5 penalty of perjury. The parties have stated their
6 agreement on the record.

7 You may proceed.

8 CLIFFORD R. HAIMANN, Ph.D.,

9 the deponent herein, called as a
10 witness, after having been first remotely duly
11 sworn, was examined and testified as follows:

12 EXAMINATION

13 BY MR. SHULTZ:

14 Q. Good morning, Dr. Haimann, Haimann.

15 A. Haimann.

16 Q. Haimann. I said it right -- wrong the
17 first time but right now.

18 We met briefly off the record a moment
19 ago; but for the record, I'm Miles Shultz, and I
20 represent the EEOC in a lawsuit that the EEOC has
21 filed against Schuster Company that's pending in
22 the Northern District of Iowa.

23 The testimony you're about to give today
24 will be in that case; do you understand that?

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Case 5:19-cv-04063-LRR-MAR Document 56-7 Filed 01/26/21 Page 6 of 12

1 what -- what happened is there were -- we made
2 a -- one report, and then we may have -- but then
3 we created a second kind of shortened, concise
4 report for them. It's essentially the same
5 content, but I think you must have the longer one.

6 Q. Oh, okay. So Exhibit 2 for Company B,
7 which you're aware that company B is Schuster, I
8 take it?

9 A. Correct, yes.

10 Q. It it's a little hard to read because it
11 bleeds onto Page 5 as well.

12 A. Right, yeah.

13 Q. So it's going to be tricky. Let's see
14 if I can do that.

15 There we go.

16 A. Yeah. Thanks.

17 Q. So it looks like, the way I'm reading
18 this, this is a graph depicting or a table,
19 two-by-two table, depicting DCI and CRT coding
20 decisions for relevant and irrelevant injuries; is
21 that right?

22 A. Correct.

23 Q. And if I am tallying this up right, it
24 looks like DCI has coded 7 relevant injuries and

1 Do you know what I'm referring to when I
2 say the "CRT cut score"?

3 A. The cut score to -- are you -- no. Can
4 you clarify what you're referring to?

5 Q. So the -- the CRT test gives this body
6 index score, are you aware of that, BIS?

7 A. Yes.

8 Q. And the BIS is that number that's
9 correlated to the Department of Labor exertional
10 classifications; do you remember that?

11 A. Yes.

12 Q. Okay. So there is a minimum passing
13 score, minimum BIS passing score, for these
14 positions; do you remember that?

15 A. Yes.

16 Q. Okay. So that's -- when I say the "CRT
17 cut score," I'm referring to that minimum passing
18 score, minimum body index passing score. Okay?

19 A. Yes.

20 Q. All right. So do you know if all these
21 different positions for Company A and Company B
22 that were included in the study, whether or not
23 they had the same "CRT cut scores"?

24 A. I do not know if they used the same "CRT

1 cut scores."

2 Q. Do you remember if that's something that
3 DCI inquired about?

4 A. I don't remember.

5 Q. In looking at the study -- let me
6 actually find the section. That will be easier.

7 | Actually, I think it's another email.

8 Hold on a second.

9 All right. I'm going to put an exhibit
10 in the chat. Burt and Doug, this is DCI471 to
11 472. I'll share it in a second.

12 (Whereupon Deposition Exhibit
13 No. 7 was marked for
14 identification by the court
15 reporter.)

16 BY MR. SHULTZ:

17 Q. All right. Cliff, are you able to see
18 my screen?

19 A. Yes.

20 MR. SHULTZ: This is Exhibit --

21 THE REPORTER: 7.

22 MR. SHULTZ: -- 6, is that right, Doug
23 or Burt? 7.

24 MR. FISHMAN: 7. I think.

1 Q. Let me find another email here.

2 Actually, it's DCI391, which is Exhibit 2. Let me
3 put that back on my screen.

4 Can you see my screen, Cliff?

5 A. Yes.

6 Q. So this paragraph here above what I have
7 in a red box says, "Schuster's data isn't
8 significant in terms of... losses"; do you see
9 that?

10 A. Yes.

11 Q. So the report, when you're analyzing
12 Company A and Schuster's data, the only -- so you
13 have, you know, logistic regressions for Company
14 A, a bunch of different statistical analyses, and
15 due to the low sample size of the Schuster data,
16 you're only able to do those Fisher exacts; is
17 that right?

18 A. Correct.

19 Q. Is there any concern with including --
20 you know, putting together Schuster's data, which
21 is pretty minimal, with Company A's data?

22 A. Can you clarify?

23 Q. Is it appropriate to include Schuster's
24 data with Company A's data since Schuster's data

1 is as -- is so minimal?

2 A. So the -- I apologize. The word
3 "appropriate" is a -- it's a broad and loaded
4 word.

5 Q. How so?

6 A. "Appropriate" statistically versus
7 "appropriate" from a job analysis standpoint.

8 Q. Yeah. Let's go with both. So, first,
9 is it "appropriate" statistically?

10 A. So we felt it was, and that's why we
11 included a control variable, a company control
12 variable, in the regressions. That was the
13 methodological factor we used to account for the
14 fact that the data had been connected.

15 Q. And how about as a -- from the job
16 analysis perspective?

17 A. What I can say to that is as external
18 consultants, we -- we do what all external
19 consultants do, which is we take the data
20 information that's provided to us and analyze it
21 to the best of our ability. So we were told that
22 these are highly similar positions and that we
23 could look at them together.

24 Q. Okay.

1 A. That is the nature of being an external
2 consultant.

3 Q. Okay. Yeah. And I think that's
4 consistent with -- I'm not sure if it's in the
5 report or maybe in that cover letter where it
6 talks about, you know, this validity study isn't a
7 transport validity study? Am I using that
8 terminology correctly? Is it transport,
9 transportability?

10 A. So "transportability" would be the word,
11 yes.

12 Q. And that has to do with job analysis.

13 MR. FISHMAN: No.

14 BY MR. SHULTZ:

15 Q. Is that correct?

16 A. Sorry. There's a lot of questions here
17 or there's -- can you be -- can you be more
18 specific of your --

19 MR. FISHMAN: Miles, can I also object
20 to this line of questioning. This is not -- this
21 is drawing on specialized technical and scientific
22 expertise regarding specialized language, and it's
23 beyond the scope of the fact witness 30(b)(6) we
24 agreed to.

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Case 5:19-cv-04063-LRR-MAR Document 56-7 Filed 01/26/21 Page 12 of 12

EEOC APP 123